

No. 12519

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**In the United States Court of Appeals  
for the Ninth Circuit**

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**TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE  
HOUSING EXPEDITER, APPELLANT**

*v.*

**ROSE SANFORD AND EDNA FORGEY, APPELLEES**

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*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF OREGON*

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**BRIEF FOR APPELLANT**

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**STATEMENT OF JURISDICTION**

Plaintiff appeals from a final judgment which granted injunctive relief but denied restitution of rent overcharges to tenants in an action brought pursuant to Section 206 of the Housing and Rent Act of 1947, as amended (50 U. S. C. App. 1881 et seq.) (R. 11). The Complaint was filed February 10, 1949 (R. 5). Defendants answered on March 2, 1949 (R. 6). Plaintiff served a Request for Admissions on defendants on March 10, 1949. On April 25, 1949, plaintiff moved for summary judgment. Thereafter, defendants answered the Request for Admissions.

Plaintiff's Motion for summary judgment was denied and the case was tried on the merits on May 24, 1949 (R. 7). Judgment was entered on February 18, 1950, together with Findings of Fact and Conclusions of Law (R. 7). Notice of Appeal was filed on March 28, 1950 (R. 12). Jurisdiction of the District Court is conferred by Section 206 of the Housing and Rent Act of 1947. Jurisdiction of this Court is conferred by Section 1291 of the Judicial Code (28 U. S. C. 1291).

#### STATEMENT OF THE CASE

Tighe E. Woods, Housing Expediter, plaintiff below, appeals from a final judgment of the United States District Court for the District of Oregon (R. 11) entered on February 18, 1950, which judgment denied plaintiff's prayer for restitution to tenants of amounts collected as rent overcharges while granting an injunction against future violations of the Housing and Rent Act of 1947, as amended.

The Complaint which was filed on February 10, 1949 (R. 2) alleged that defendant, Rose Sanford, was the landlord of controlled housing accommodations located at 1825 S. W. 3d Avenue, Portland, Oregon, in the Portland-Vancouver Defense Rental Area (R. 3); that defendant, Edna Forgey, is the Manager of said housing accommodations and the agent of defendant Sanford (R. 3); that defendants had violated the provisions of the Housing and Rent Act of 1947, as amended, and the regulations issued pursuant thereto by collecting rents in excess of the maximum legal rentals for six of the dwelling units located in said housing accommodations (R. 3). Plaintiff prayed for

restitution of overcharges to the tenants in the amount of \$435 and for an injunction against future violations (R. 3).

After trial on May 24, 1949 the Trial Court found as facts that defendant, Rose Sanford, was the landlord and operator of the controlled housing accommodations (R. 8); that defendant, Edna Forgey managed and directed said accommodations (R. 8); that defendants collected and received from Frank S. Callopy overcharges in the amount of \$130 for occupancy of Apartment 9 (R. 9); that defendants collected and received from Mrs. Eva Palmer overcharges in the amount of \$120 for occupancy of Apartment 12 (R. 9); and that there had been no testimony as to any other overcharges (R. 9).

As Conclusions of Law, the Court held that plaintiff was entitled to a permanent injunction restraining the defendants and each of them from collecting, demanding or receiving, rentals in excess of the maximum legal rentals established by law for Apartments 9 and 12 in the premises situated at 1825 S. W. 3d Avenue, Portland, Oregon (R. 10); and that plaintiff's prayer for an order of restitution should be denied for the reason that the granting of restitution would constitute imprisonment for debt (R. 9). Judgment was entered on February 18, 1950 (R. 11). Plaintiff appeals from that part of the judgment which denied restitution to the tenants since it was based solely on the conclusion of law that the granting of such restitution would constitute imprisonment for debt (R. 12).

## SPECIFICATIONS OF ERROR

## I

The District Court erred in holding that the granting of restitution would constitute imprisonment for debt.

## II

The District Court erred in denying an order granting restitution of rental overcharges because in so doing it deprived the Housing Expediter of a remedy to which he was entitled and allowed defendants to retain the money by which they had been unjustly enriched.

## III

The District Court erred in denying restitution.

## SUMMARY

Appellant contends that the trial court should be reversed because it was in error in concluding as a matter of law that the granting of an order of restitution would constitute imprisonment for debt. There is no danger of imprisonment for failure to obey an order of restitution through inability to perform. Financial inability is a valid defense to an order of restitution of money. The Court should have vindicated the public interest under an emergency statute by granting restitution when it was sought by a public official as an aid to enforcement of the federal law. The issuance of an order of restitution would place on defendants the burden of proving their inability to pay which is proper. But if they established such inability there would be no imprisonment. Accord-



ingly, the Court erred as a matter of law in denying relief on the ground that granting an order of restitution would constitute imprisonment for debt.

#### ARGUMENT

Appellant, plaintiff below, alleges as error only the refusal by the Trial Court to grant restitution of rental overcharges to the two tenants who occupied the housing accommodations owned by defendant, Rose Sanford, as to whom overcharges were proved, on the ground that the granting of restitution would constitute imprisonment for debt (R. 9).

Appellant, therefore, presents the following argument.

**The district court erred in concluding as a matter of law that the granting of restitution would constitute imprisonment for debt**

The contention that an order of restitution would constitute imprisonment for debt cannot be sustained. It has been recently rejected by the Courts of Appeals for the Sixth and Eighth Circuits. In the Sixth Circuit the question arose in the case of *Woods v. Budd*, 179 F. 2d 244, in which the Trial Court denied an order of restitution of rental overcharges where the defendant had defaulted and the Housing Expediter failed to show her inability to pay. The Court of Appeals reversed the Court below without opinion other than instructions to enter an order of restitution against defendant. It has followed the same procedure in a group of five later cases similarly disposed of by the same trial judge (see *Woods v. Edgell*, No. 11018; *Woods v. Ferguson*, No. 11019;

*Woods v. Palicka*, No. 11020; *Woods v. Owsley*, No. 11021; and *Woods v. Koogle*, 180 F. 2d 1022, in the United States Court of Appeals for the Sixth Circuit).

The sole question in those cases was of whether or not defendants would be imprisoned for debt. It was fully discussed in the Housing Expediter's brief and on the argument. The same principle was clearly stated in the second Warner Holding Company case, *Warner Holding Company v. Creedon*, 166 F. 2d 119 (C. A. 8). The Supreme Court had determined in the case of *Porter v. Warner Holding Company*, 328 U. S. 395, that restitution was a proper equitable remedy. The case was then remanded to the District Court which ordered defendants to make restitution of the rental overcharges to the tenants. The defendants on a further appeal contended that they were unable to comply with the court's order and would, therefore, be imprisoned for debt contrary to the Constitution of the United States. The Court of Appeals for the Eighth Circuit rejected this contention stating (at p. 122):

Nor does it appear from anything in the record that the defendant's officers are presently or that they will be at any time in the future threatened with an unconstitutional imprisonment. They are in no danger of punishment by imprisonment for failure to perform the order of restitution where performance is impossible, and where they in good faith make a reasonable effort to comply with the court's order. *Chapman v. United States*, 8 Cir., 139 F. 2d 327, 331; *McGarry v. Securities and Ex-*

*change Commission*, 10 Cir., 147 F. 2d 389, 392, 393; *Hugen v. Porter*, 9 Cir., 156 F. 2d 362, 366; *Cooper v. Dasher*, *supra*, 290 U. S., page 110, 54 S. Ct. page 7, 78 L. Ed. 203.

The case of *Chapman v. United States*, 139 F. 2d 327, 331 (C. A. 8), cited above contains the following statement to the same effect.

Concerning appellant's final contention that the judgment of the District Court ordering him to pay the amount found by the court to be owing by him to the market administrator for the producer-settlement fund is void, because exposing the appellant to imprisonment for debt in violation of the statute of the United States (28 U. S. C. A. § 843), and contrary to Article 2, Section 16, of the Constitution of the State of Missouri, Mo. R. S. A., it is sufficient to say that there is nothing in the record to indicate that appellant is unable to pay the judgment against him, or even that he is unwilling to pay it if the judgment of the court below is in accordance with the law. Specific enforcement of the marketing orders is authorized by the Marketing Agreement Act, 7 U. S. C. A. § 608a (6), and mandatory injunctions requiring handlers to make payments of amounts due from them under marketing orders of the Secretary have received approval by the courts of the United States. *United States v. Rock Royal Co-Op., Inc., et al.*, and other cases cited *supra*. The appellant has not been imprisoned, nor threatened with imprisonment, and, if his contention is well founded, we may not suppose that the District Court will attempt to enforce its judgment by unlawful

or unconstitutional means. It will be time enough for the appellant to raise this point when the unlikely contingency occurs or is threatened.

In the instant case the Trial Court denied restitution for the sole reason that to grant restitution would constitute imprisonment for debt (R. 13). If the restitution order is granted, defendants, if able to pay, will be compelled to do so or suffer the penalty attached to contempt of court. But if unable to pay, they will not be imprisoned for debt since inability to pay is a valid defense to a contempt proceeding (Cf. *Maggio v. Zeitz*, 333 U. S. 56). This is the type of case where the defendants have the keys to the jail in their own pockets.

If the defendants are not financially able to make restitution they will lose nothing by the entry of an order directing them to make restitution. It is only when they fail to obey the order that plaintiff will be entitled to apply for a rule requiring them to show cause why they should not be held in civil contempt.

*E. Ingraham Co. v Germanow et al.*, 4 F. 2d 1002 (C. A. 2).

*Coca-Cola Co. v. Feulner*, 7 F. Supp. 364 (S. D. Tex.).

The Supreme Court has held that restitution of rental overcharges is an equitable remedy which may be employed by the courts of the United States in bringing about compliance with emergency legislation affecting the economy of the Nation. In *Porter v. Warner Holding Co.*, *supra*, p. 402, the Supreme Court said:

\* \* \* When the administrator seeks restitution under § 205 (a), he does not request the court to award statutory damages to the purchaser or tenant or to pay to such person part of the penalties which go to the United States Treasury in a suit by the Administrator under § 205 (e). Rather he asks the court to act in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant. Such action is within the recognized power and within the highest tradition of a court of equity. Thus it is plainly unaffected by the provision of § 205 (e).

The order of the Trial Court in this case not only disregarded the public interest but in the face of the Supreme Court's holding on the propriety of an order of restitution condemned it in effect as an unconstitutional exercise of power.

Accordingly, the Court below was clearly in error in denying restitution upon the ground that to grant it would constitute unlawful imprisonment for debt. The premise being false, the ruling based thereon must likewise fall unless there are other reasons assigned for the conclusion reached. Since there are no other grounds stated, the judgment below must be reversed with instructions to grant the relief prayed for in the Complaint.

## CONCLUSION

It is respectfully submitted that the judgment should be reversed and the case remanded to the Court below with instructions to grant the order of restitution as prayed for in the Complaint.

Respectfully submitted.

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